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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,883	03/31/2004	Iain Kalfas	DUQ-002 (DEP5290)	9073

959 7590 11/16/2005

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BOSTON, MA 02109

EXAMINER	
REIMERS, ANNETTE R	
ART UNIT	**PAPER NUMBER**
3733	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/815,883	KALFAS ET AL.	
	Examiner	Art Unit	
	Annette R. Reimers	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-28 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-28 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 14 September 2004 is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 11/17/04, 08/01/05.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Oath/Declaration

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.The oath or declaration is defective because: It was not executed in accordance with either 37 CFR 1.66 or 1.68, i.e. the oath/declaration that was submitted on September 14, 2004 has the signature of only one of the inventors. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-28 are rejected under 35 U.S.C. 102(b) as being anticipated by Simonson (US Patent Number 5,643,263).

Simonson discloses a connector for connecting a first rod, 88, and a second rod, 80, comprising a housing component defining a first bore hole, 26, for receiving a portion of the first rod, the first bore hole extending along a first longitudinal axis and a

second bore hole, 22, for receiving a portion of the second rod, the second bore hole extending along a second longitudinal axis and a locking element, 60 and 96, for securing one of the first rod within the first bore hole and the second rod within the second bore hole, wherein the first longitudinal axis is configured to be offset in a sagittal plane from the second longitudinal axis by a variable predetermined offset distance when the connector is implanted in a patient (see figures 6-9). Furthermore, the first housing component includes a first set of external teeth, 72, on an outer surface and the second housing component includes a second set of external teeth, 72, on an outer surface thereof configured to interlock with the first set of teeth at a plurality of discrete positions (see figure 8 and column 3, lines 32-47). The second housing component includes a coupling rod, 30, extending in a direction that is transverse to the second bore hole and the first housing component includes a coupling hole, 32, configured to receive the coupling rod (see figure 1). The coupling rod can include a first set of teeth on an outside surface and the coupling hole can include a second set of teeth on an inside surface configured to interlock with the first set of teeth (see column 2, lines 32-54). The connector further comprises a clamping mechanism, 48 and 52, for securing the first housing component in a selected position relative to the second housing component and a spherical bushing, 40, in the second bore hole for moving the second bore hole to adjust an angle of the second rod relative to the first rod (see figures 1-2). The connector also has a top-loading set screw, 24, for securing both the first rod and the second rod (see figure 1, 6 and 8). Regarding method claims 21-26, the

connector device of Simonson is capable of performing the method of connecting a first rod to a second rod.

Claims 1-28 are rejected under 35 U.S.C. 102(e) as being anticipated by Taylor (US Patent Number 6,685,705).

Taylor discloses various embodiments of a connector for connecting a first rod, B, and a second rod, A, comprising a housing component defining a first bore hole, 8, for receiving a portion of the first rod, the first bore hole extending along a first longitudinal axis and a second bore hole, 6, for receiving a portion of the second rod, the second bore hole extending along a second longitudinal axis and a locking element, 3 and 5, for securing one of the first rod within the first bore hole and the second rod within the second bore hole, wherein the first longitudinal axis is configured to be offset in a sagittal plane from the second longitudinal axis by a variable predetermined offset distance when the connector is implanted in a patient (see figure 1). Furthermore, the first housing component includes a first set of external teeth on an outer surface and the second housing component includes a second set of external teeth on an outer surface thereof configured to interlock with the first set of teeth at a plurality of discrete positions (see figures 6-9). The second housing component includes a coupling rod, 10, extending in a direction that is transverse to the second bore hole and the first housing component includes a coupling hole, 9, configured to receive the coupling rod (see figures 1-3). The coupling rod can include a first set of teeth on an outside surface and the coupling hole can include a second set of teeth on an inside surface configured to interlock with the first set of teeth (see figures 1-3). The connector further comprises a

clamping mechanism for securing the first housing component in a selected position relative to the second housing component and a spherical bushing, 33, in the second bore hole for moving the second bore hole to adjust an angle of the second rod relative to the first rod (see figures 8-9). The connector also has a top-loading set screw, 40, for securing both the first rod and the second rod (see figure 8). Regarding method claims 21-26, the connector device of Taylor is capable of performing the method of connecting a first rod to a second rod.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO 892 for art cited of interest.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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EDUARDO C. ROBERT
PRIMARY EXAMINER